

REMARKS

Claim Rejections under 35 U.S.C. § 103

The Office Action maintained the rejection claims 1-19 under 35 U.S.C. § 103(a) as obvious over EP 0 521 562 in view of EP 0 678 295, EP 0 159 237, GB 2002319, JP 05194253 by themselves or in combination. The Applicants respectfully traverse this rejection.

First, the applicants maintain their previous arguments regarding the cited art and traverse the Office Actions assertions regarding the teachings of the cited art. Based upon these arguments alone, the claims are non-obvious in view of the cited art.

Moreover, the claimed compositions and methods are non-obvious because they possess an unexpected property. As recited on page 2, ll. 10-14, of the specification:

Surprisingly the same powder of reversed vesicles on dispersion in another apolar vehicle, such as a biodegradable oil, also maintains its vesicular structure and in this way a secondary dispersion of reversed vesicles is instantaneously obtained. The amount of reversed vesicles in the biodegradable oil appears to be very high as compared with the yield of reversed vesicles when these would have been prepared directly in the biodegradable oil.

See also Examples 3-5. Confirmatory data can also be found in *J. Pharm. Sci.* (2000) 89:930-939, a copy of which the applicants is enclosed for review by the Examiner. Such a property is nowhere taught, suggested, or contemplated by any of the cited references. The presence of a property not possessed by the prior art is evidence of non-obviousness. *In re Papesch*, 315 F.2d 381, 137 USPQ 43 (CCPA 1963); MPEP § 716.02(a). The applicants respectfully submit that these unexpected properties render the claimed compositions and processes non-obvious.

In response to the applicants' previous assertion of non-obviousness based on the foregoing unexpected properties, the Office Action asserted the argument was not persuasive because:

- (a) neither the product or process claims recite limitations regarding the unexpected properties; and
- (b) the vesicular preparation in EP 0 521 562 is the same as the instant application.

With regard to assertion (a), the applicants respectfully submit that the claims need not recite a limitation relating to the foregoing unexpected properties because they are inherent in the claimed process and compositions. Nevertheless, the applicants have amended claim 1 to recite an

unexpected property of the claimed compositions. Similarly, new composition claims 20 and 28 (and those new claims that depend therefrom) recite different aspects of the unexpected properties.

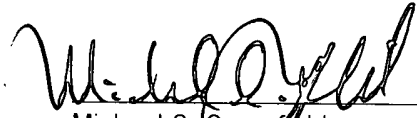
With regard to assertion (b), the applicants respectfully, but strongly, disagree. The vesicular preparation of EP 0 521 562 **is not** the same as the instant application. The preparation of EP 0521 562 is a **dispersion** whereas the instant claims are directed to a **powder**. It is the powder (and method for making it) and not the dispersion that possesses the unexpected properties.

For all of the foregoing reasons, the applicants respectfully request reconsideration and withdrawal of this § 103 rejection.

If the Examiner believes that a telephone or personal interview would expedite prosecution of the instant application, the Examiner is invited to call the undersigned attorney at (312) 913-2135.

Respectfully submitted,

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